

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN B. LOPEZ, AW1123,

Petitioner,

v.

RAYTHEL FISHER, Warden,

Respondent.

Case No. [18-cv-01328-CRB](#) (PR)

**ORDER DISMISSING PETITION  
FOR A WRIT OF HABEAS  
CORPUS FOR FAILURE TO  
EXHAUST**

(ECF No. 2)

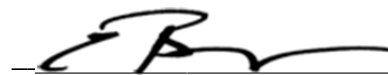
Petitioner, a state prisoner incarcerated at Valley State Prison in Chowchilla, California, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a February 2015 conviction and sentence from Contra Costa County Superior Court.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995) (Supreme Court of California must be given at least one opportunity to review state prisoners' federal claims). Accordingly, the petition for a writ of habeas corpus is **DISMISSED** without prejudice to filing a new petition after state judicial remedies are exhausted.

The clerk shall close the file and terminate all pending motions (ECF No. 2) as moot.

**IT IS SO ORDERED.**

Dated: April 2, 2018



CHARLES R. BREYER  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN B. LOPEZ,  
Plaintiff,

v.

STATE OF CALIFORNIA,  
Defendant.

Case No. 3:18-cv-01328-CRB

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 2, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin B. Lopez ID: AW1123  
Valley State Prison A3-218U  
21633 Avenue 24  
P.O. Box 96  
Chowchilla, CA 93610-0096

Dated: April 2, 2018

Susan Y. Soong  
Clerk, United States District Court

By:   
Lashanda Scott, Deputy Clerk to the  
Honorable CHARLES R. BREYER